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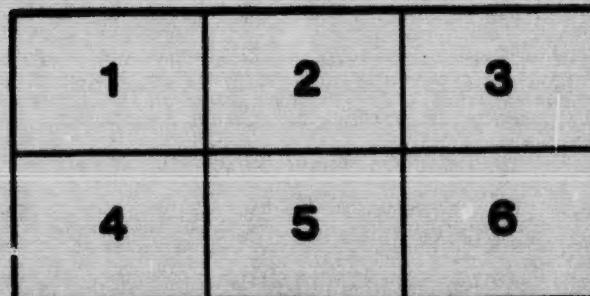
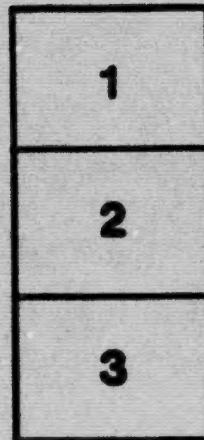
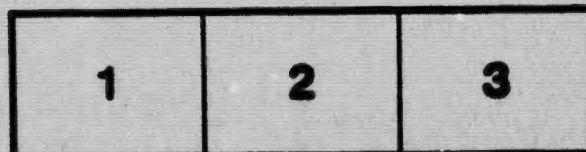
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A SHORT ACCOUNT OF THE NEGOTIATIONS
WHICH RESULTED IN THE
CONVENTION OF THE 20TH OCTOBER, 1818
BETWEEN
Great Britain and the United States
TOGETHER WITH THE
TEXT OF THE TREATY

A SHORT ACCOUNT OF THE NEGOTIATIONS WHICH RESULTED IN THE CONVENTION OF THE 20TH OCTOBER, 1818, BETWEEN GREAT BRITAIN AND THE UNITED STATES, TOGETHER WITH THE TEXT OF THE TREATY.

The questions in relation to the North American fisheries which for more than a century have periodically engaged the attention of British and American diplomats and at times threatened a disturbance of the friendly relations happily long subsisting between the two countries have their origin in the war of the Revolution. Prior to that momentous event all subjects of the King of England enjoyed in equal degree the privileges of fishing in British waters and of drying and curing their fish on British soil. Foremost among those who pursued this avocation were the dwellers along the New England coast, who, partly by reason of their proximity to the fishing grounds, and partly owing to the share which they had borne in the acquisition of Acadia, came to regard the industry as one peculiarly their own. Indeed it may be said that for a time they had no competitors among their countrymen, for the few struggling colonists scattered at wide intervals along the shores of what now form the maritime provinces of Canada could scarcely be regarded in that light. Thus season after season the New England fishermen frequented in peace the lonely shores of Acadia and the Gulf of St. Lawrence to draw therefrom the riches of the sea.

The war of Independence changed all this, and the revolted colonist learned to his surprise and chagrin that when he renounced his allegiance to the British Crown he forfeited the privileges which that allegiance conferred.* These privileges, says a distinguished American of the time, 'were of great magnitude to the United States. Besides affording profitable fields of commerce they fostered a race of seamen conducive to the national riches in peace as to defence and glory in war.'†

Rush's "Residence at the Court of London" Ed. 1823. p. 324.

*Count de Vergennes, although he had been a partisan of the United States in the Revolution, said, in a letter to M. de la Luzerne, the French Minister at Philadelphia, dated September 25th, 1777.

It is essential to remark that the fisheries belong, and have always belonged, to the Crown of Great Britain, and that it was as subjects of the Crown the Americans enjoyed them—consequently, from the moment when they shook off the English yoke and declared themselves independent, they broke the community which existed between them and the metropolis; and voluntarily relinquished all the advantages which they derived from that community just as they despoiled England of all the advantages she derived from their union with her.

It should therefore, be well established that from the moment when the colonies published their Declaration of Independence they have ceased to own a share in the fisheries, because they have forfeited by their own act the qualification which entitled them to such a share; that consequently they can offer to the Court of London neither title nor actual possession; from this comes another result, viz., that the Americans having no right to the fishing we can give them no guarantee on that head.' (III de Circuit, pp. 276, 277).

Earl Bathurst writing Mr. Adams under date 30th October, 1815, observed:—

When the United States by their separation from Great Britain became released from the duties they became excluded also from the advantages of British subjects.'

So late as February 5th, 1887, Mr. Manning, Secretary of the Treasury, said, in reference even to the right to enter the bays and harbours of Canada for shelter and to make repairs, to purchase wood and to obtain water—

So indispensable in fact were they judged to be to the well-being of the new nation, that in the negotiations which resulted in the recognition by Great Britain of the United States as a sovereign power, the American Plenipotentiaries stipulated as an essential condition of peace for the continuance to the United States fishermen of the liberty of taking, drying and curing fish within the exclusive British jurisdiction on the North American coast which they had heretofore enjoyed. After a full discussion of the subject, the following compromise was agreed upon, and forms Article III. of the Treaty signed at Paris on September 3, 1783.

ARTICLE III.

'It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlements, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.'

It will be observed that the provisions of this article fall considerably short of the contentions of the United States.

The claim put forward by the American Plenipotentiaries was that their fishermen should continue to enjoy the same right of drying and curing fish within the exclusive jurisdiction of England on the North American coasts as they had possessed as British subjects.

The use of the word 'rights' was strongly urged by Mr. Adams, but without avail, for its partial and restricted employment in the Treaty serves but to emphasize the refusal of the British Government to entertain the claim of the United States to continue in possession of advantages flowing from an allegiance which they had voluntarily renounced.

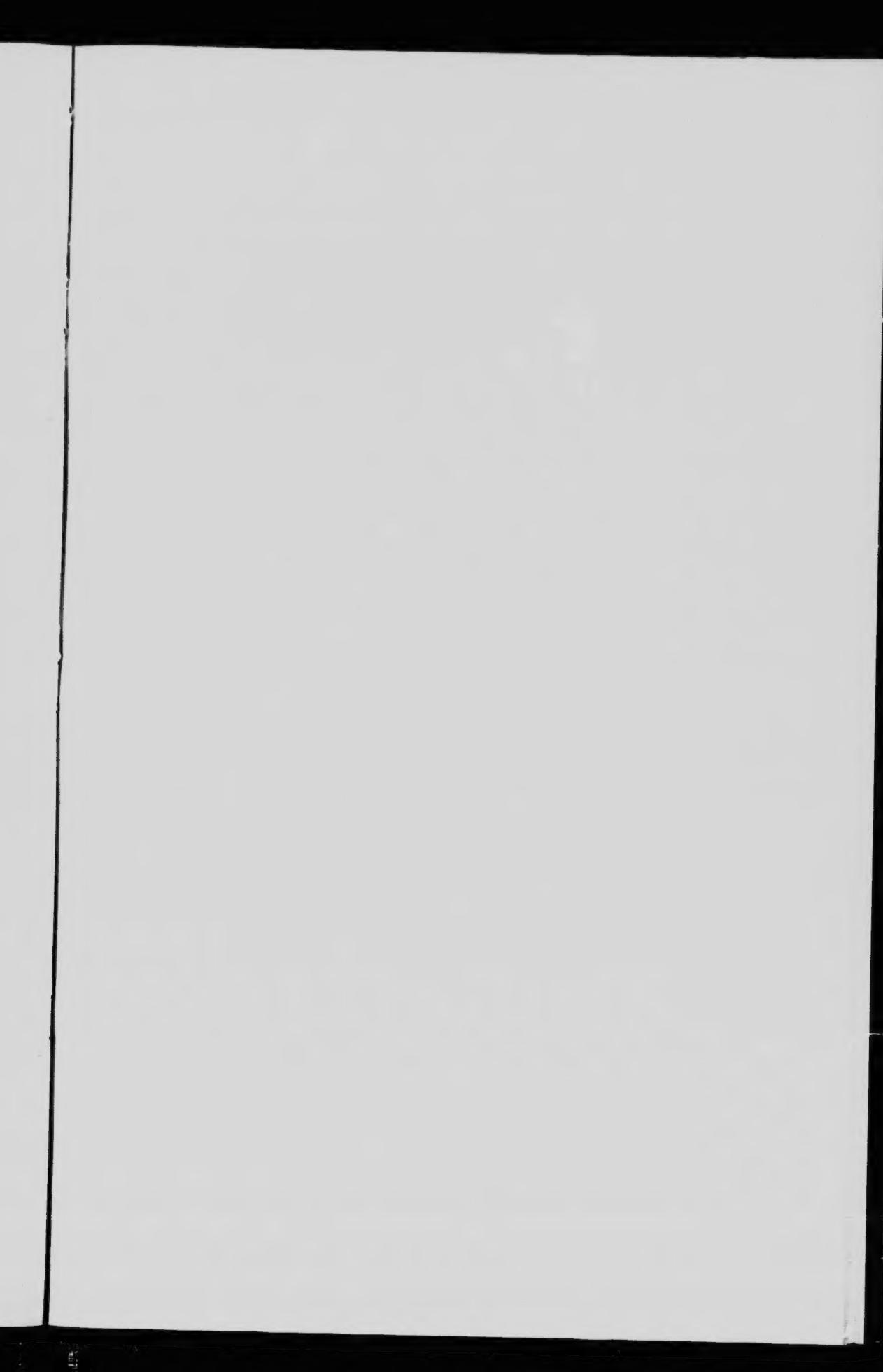
The point at issue, however, as it affected Great Britain, was mainly one of principle, for at that time the sparseness of population in the maritime British colonies rendered it a matter of small consequence who fished in their waters. In view of this fact, and in return for advantages bearing upon the navigation of the Mississippi

'as colonists we had those rights but as colonists we lost them.' (4th Congress, 2nd Sess., No. 4087.)

[†] John Quincy Adams, Secretary of State of the United States in 1822, in his controversy with Jonathan Russell over questions arising out of the negotiation of the Treaty of Ghent observes that 'the portion of the fisheries to which we are entitled, even within the British territorial jurisdiction, is of great importance to this Union. To New England it is among the most valuable of earthly possessions. The Duplicate Letters, the Fisheries and the Mississippi, ed. 1822, p. 199.)

And again:—

'The shores, the creeks, the inlets of the Bay of Fundy, the Bay of Chaleurs, and the Gulf of St. Lawrence, the Straits of Bellisle, and the coast of Labrador, appear to have been designed by the God of Nature as the great ovarium of fish;—the inexhaustible repository of this species of food, not only for the supply of the American, but of the European continent. At the proper season, to catch them in endless abundance, little more of effort is needed than to bait the hook and pull the line, and occasionally even this is not necessary. In clear weather, near the shores, myriads are visible and the strand is at times almost literally paved with them.' (ib. p. 211.)



and the Great Lakes, England, after acknowledging the right of the citizens of the United States to fish on the Grand Banks of Newfoundland and elsewhere in the open sea, proceeded to concede to American fishermen the liberty of fishing in British waters and the liberty of drying and curing fish on certain specified coasts. This latter privilege, however, was by no means co-extensive with the rights formerly enjoyed by United States fishermen, for, whereas, when British subjects, all shores were open to them, under this Treaty they were not permitted to dry and cure fish on any part of Newfoundland and only upon those portions of Nova Scotia, the Magdalen Islands and Labrador where no British settlement existed or might be formed, excluding Cape Breton and Prince Edward Island.*

This arrangement continued undisturbed until the year 1812, when the United States fishermen found themselves again shut out from British waters by the action of their Government in declaring war against England.

On the conclusion of that war, the question of the fisheries revived and formed the ground of an acute difference between the two countries. Great Britain held that the liberty hitherto enjoyed by the United States of fishing within British limits and of using British territory for purposes connected with the fisheries, was derived from the third article of the Treaty of 1783 and from that alone. This treaty, in accordance with the well understood rule of public law was, British and Foreign State Papers 1819-1830 Vol 7, p. 94. maintained, annulled by the war, whence it followed that the United States could no longer possess any rights or privileges dependent thereon. Nor did Great Britain contemplate a renewal of the *status quo* for, at the first meeting of the Commissioners appointed to agree upon the terms of peace, held at Ghent on the 8th August, 1814, her plenipotentiaries gave formal notice to the representatives of the United States 'that the British Government did not intend to grant to the United States, "gratuitously the privileges formerly granted to them by treaty of fishing within the limits of British sovereignty and of using the shores of the British territories for purposes connected with the fisheries."

The United States plenipotentiaries dissented from this view. They did not deny that by common understanding and usages of civilized nations treaties were annulled by a subsequent war between the parties thereto, but they insisted that this rule was not applicable to the Treaty of 1783. That treaty, they urged, was, in the words of their minister to Great Britain, "peculiar in its nature and objects. It had no analogy to common treaties and was not to be judged by their rules. It was a treaty by which Great Britain had acknowledged the independence of the United States after a seven years' contest in arms. It made two empires out of one. It was a treaty of separation. The rights of each party were laid down as primary and fundamental in the act of dismemberment which the treaty established. So much of territory and incidental rights in America were allotted to one, so much to the other. The entire instrument implied permanence. Hence, all the fishing rights secured under it to the United States were placed by Great Britain upon the same foundation with their independence itself." †

Rush's "Residence at Court of London," p. 325.

* This Treaty was very unfavourably regarded by the public men of England. Speaking on the subject in 1814, Mr. Canning brought to the notice of the Imperial Parliament the necessity of revising its provisions. He said:

"In our Treaty of 1783 we gave away more than we ought and we never hear of that Treaty but as a trophy of victory on the one hand or a monument of degradation and shame on the other."

† This, it afterwards appeared was not the unanimous opinion of the United States Plenipotentiaries. Within a few days of the signing of the Treaty of Ghent, Mr. Jonathan Russell, one of the American negotiators, in

To the notice given by the British Plenipotentiaries at Ghent the United States Plenipotentiaries replied next day to the effect that they had no instructions from their Government to negotiate upon the subject of the fisheries, and on the 10th November following they formally declined to admit that any further understanding was necessary to their continued enjoyment of those rights and privileges specified in the Treaty of 1783.

It being found impossible to reconcile these conflicting views, an agreement to omit all reference to the fisheries was arrived at. The Treaty of Ghent, therefore, contains no mention of the subject. This omission, however, by no means indicated any intention on the part of Great Britain to abandon her position with regard to the fisheries. In 1783 she had consented to share a field in which the harvest was plenteous and the labourers few, but in thirty years the conditions had materially changed. The British colonies largely recruited from the motherland, had developed a race of fishermen no less bold and hardy than their cousins of New England. Year by year as the number of unsettled bays, harbours and creeks in Nova Scotia diminished, the risk of collision between British and American fishermen correspondingly increased. These disorders were felt to be so detrimental to British interests that on the eve of the negotiations which resulted in the Treaty of Ghent the colonists and English merchants engaged in the fisheries petitioned against a renewal of the privileges granted to American fishermen by the Treaty of 1783.

British and Foreign State Papers, 1819-1820, Vol. 7, p. 133. The Treaty of Ghent was concluded on the 24th December, 1814. On the 17th June, 1815, the home Government notified the Government of Newfoundland that the third article of the Treaty of 1783 was no longer in force, and subsequently instructions were sent to the naval officer in command of H. M. Squadron on the North American station to prevent foreigners from using British territory for purposes connected with the fisheries and to exclude their fishing vessels from the territorial waters of Great Britain.

Ib. pp. 71-2. Several seizures of United States fishing vessels followed. In June, 1815, Commander Lock, of H.M.S. 'Jaseur' captured eight and sent them into Halifax as prizes. He also warned several others not to come within 60 miles of the coast, which extreme act was subsequently disavowed by the Imperial authorities.

Ib. pp. 139-140. In June, 1817, Captain Chambers, of H.M.S. "Dee," seized in the harbours of Cape Negro and the Ragged Islands, Nova Scotia, 20 United States fishing vessels lying with nets set, and sent them to Halifax for adjudication.

Ib. pp. 69-236. The United States energetically protested against these drastic measures and a long correspondence ensued between Mr. John Quincy

a long letter to the Secretary of State of the United States, enters into an elaborate argument to express his emphatic dissent from the view of a majority of his colleagues that the Treaty of 1783 differed in any essential respect from ordinary treaties. In the course of his remarks, he said :

"I freely confess, however, that I did not accord with the majority, either in their views of the Treaty of 1783, whence they derived their principles, nor of our instructions; and that my great objection to proposing the article did not arise from an anxiety to reconcile our conduct with our reasoning and declarations.

"I could not believe that the independence of the United States was derived from the Treaty of 1783; that the recognition of that independence, by Great Britain, gave to this treaty any peculiar character, or that such character, supposing it existed, would necessarily render this treaty absolutely inseparable in its provisions, and make it one entire and indivisible whole, equally imperishable in all its parts, by any change which might occur in the relations between the contracting parties.

"It is from this view of the subject that I have been constrained to believe that there was nothing in the Treaty of 1783, which could, essentially, distinguish it from ordinary treaties, or rescue it, on account of any peculiarity of character, from the *iura belli*, or from the operation of those events on which the continuation or termination of such treaties depends." (The Duplicate Letters, the Fisheries and Mississippi, by John Quincy Adams, pp. 65-6 and 68.)

Adams and Earl Bathurst, which resulted in the British Government adhering to its position.

Taking advantage of the approaching termination of the Commercial Convention concluded between the two nations on the 3rd July, 1818, the President of the United States in May, 1818, proposed to the Government of the Prince Regent the negotiation of a general treaty of commerce which should include in addition to other subjects "the question of such immediate importance relating to the fisheries." This proposal was favourably received, and the Right Honourable Frederick John Robinson, President of the Board of Trade (afterwards first Earl of Ripon) and Henry Goulburn were appointed plenipotentiaries to treat with Messrs. Albert Gallatin, United States Minister to France, and Richard Rush, United States Minister to Great Britain, representing the United States. These plenipotentiaries met at Whitehall on the 27th August, 1818, and proceeded, to take into consideration, in the first place, the subject of the fisheries.

At the outset of the negotiations, the United States plenipotentiaries re-affirmed the position of their Government respecting the provisions of the Treaty of 1783, which they held to be of perpetual obligation, and therefore unaffected by the war of 1812.

This contention, which they supported by arguments already outlined* was strenuously resisted by Great Britain. She denied that the Treaty of 1783 had anything in its nature to exempt it from abrogation by war. She knew of no exception to this rule of international law; and could not consent to give to her diplomatic relations with one State, a different degree of permanence from that on which her connection with all other States depended. She did not admit that this treaty was to be regarded as in force because the Treaty of Ghent had referred to it on the subject of boundaries. One object of the latter treaty was, the mutual restoration of territory taken by either party from the other during the war. As a necessary consequence of such stipulation, each party reverted to their boundaries as before the war, and the Treaty of 1783 having fixed these, the Treaty of Ghent has referred to them as *facts*, nothing more. She contended that it was not unusual for treaties containing recognitions and acknowledgments of perpetual obligation, to contain likewise grants of privilege liable to be revoked. The Treaty of 1783 contained provisions of different characters; some in perpetuity, others, from their nature, temporary. If it were inferred that because some of the advantages specified would not terminate by war, therefore all were designed to be permanent, it ought first to be shown that the advantages themselves were the same, or of similar character. But what necessary connection was there between a right to national independence, and a liberty to fish within British jurisdiction, or use British territory? Liberties within British limits were as capable of being exercised by a dependent, as an independent State; they could not, therefore, be the necessary consequence of independence. The independence of a nation was that which could not be correctly said to be granted by a treaty, but to be acknowledged by one. In the Treaty of 1783, the independence of the United States was acknowledged by Great Britain, as it had already been by the powers of Europe; and by Britain herself, in her previous consent in November, 1782, to enter into provisional articles. Their independence might have been acknowledged without either the treaty or provisional articles; but by whatever mode acknowledged, the acknowledgment was,

* See ante page 5.

in its nature, irrevocable. A power of revoking or even modifying it, would be destructive of the thing itself, and was therefore necessarily renounced when the acknowledgment was made. She urged as corroborative of her reasoning, notwithstanding the explanations suggested by the American plenipotentiaries, the use of the word *right* when the United States were to take fish on the banks, and other places from which Great Britain could not pretend to exclude any independent nation, and *liberty* when they were to cure and dry within British territory. The latter was also made to depend on agreements with the proprietors of the soil whenever the territory might be settled. As to the origin of the fishing privileges in point of fact, she admitted that whilst the United States made part of the British dominions, their inhabitants had the enjoyment of them in common with other British subjects; but they had at the same time, like British subjects everywhere, duties to perform. When therefore the United States, by their separation from Great Britain, became released from the duties, they became excluded also from the privileges of British subjects.

Notwithstanding the bold front of their plenipotentiaries, it is clear that the United States Government did not entertain any confident expectation of the success of their extreme contention as to the permanence of the Treaty of 1783, for on the 29th July, 1818, Mr. John Quincy Adams, Secretary of State of the United States, wrote to Messrs. Gallatin and Rush:—

State Papers,
1819-1820,
Vol. 7, p.
162.

"The President authorizes you to agree to an Article, whereby the United States will desist from the liberty of fishing and curing and drying fish within the British jurisdiction *generally* upon condition that it shall be secured as a permanent right, *not liable to be impaired by any future war*, from Cape Ray to the Rummian Islands, and from Mount Joli, on the Labrador Coast, through the Straits of Belle Isle, indefinitely, north, along the Coast; the right to extend as well to curing and drying the fish, as to fishing."

On the 17th September, the United States plenipotentiaries submitted the following *project*:—

State Papers
1819-1820,
Vol. 7, p. 178

"Art. A.—*Fisheries*.—Whereas, differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry, and cure fish, on certain coasts, bays, harbours and creeks, of His Britannic Majesty's dominions in America; it is agreed between the high contracting parties that the inhabitants of the said United States shall continue to enjoy unmolested for ever, the liberty to take fish of every kind, on that part of the southern coast of Newfoundland, which extends from Cape Ray to the Ramea Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to Quirpon Island, on the Magdalen Islands, and also on the coasts, bays, harbours and creeks, from Mount Joli, on the southern coast of Labrador, to, and through, the Straits of Belle Isle, and thence northwardly, indefinitely, along the coast; and that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland as here above described, of the Magdalen Islands, and of Labrador, as here above described; but so soon as the same, or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose, with the inhabitants, proprietors, or possessors of the ground; and the United States hereby renounce any liberty heretofore enjoyed, or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of, any of the coasts, bays, harbours and creeks, of His Britannic Majesty's dominions in North America, not included within the above-mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays, and harbours, for

the purpose only of obtaining shelter, wood, water, and bait,* but under such restrictions as may be necessary to prevent their taking, drying or curing, fish therein, or in any other manner abusing the privileges hereby reserved to them."

On the 6th October, the British Plenipotentiaries gave in the following counter project:—

"Art. A.—*Fisheries.*—It is agreed that the inhabitants of the *ib. pp. 125-6.* United States shall have liberty to take fish, of every kind, on that part of the southern Coast of Newfoundland which extends from Cape Ray to the Quirpon Islands, and on that part of the southern and eastern Coasts of Labrador which extends from Mount Joli to Huntingdon Island and it is further agreed that the Fishermen of the United States shall have liberty to dry and cure fish in any of the unsettled Bays, Harbours, and Creeks, of the said south and east Coasts of Labrador, so long as the same shall remain unsettled; but, as soon as the same, or any part of them, shall be settled, it shall not be lawful for the said Fishermen to dry or cure fish, on such part as shall be settled, without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

"And it is further agreed, that nothing contained in this Article shall be construed to give to the inhabitants of the United States any liberty to take fish within the Rivers of His Britannic Majesty's Territories as above described; and it is agreed, on the part of the United States, that the Fishermen of the United States resorting to the mouths of such Rivers, shall not obstruct the navigation thereof, nor wilfully injure nor destroy the fish within the same either by setting nets across the mouths of such rivers, nor by any other means whatever.

"His Britannic Majesty further agrees that the Vessels of the United States, *bona fide* engaged in such Fishery, shall have liberty to enter the Bays and Harbours of any of His Britannic Majesty's Dominions in North America, for the purpose of shelter, or of repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever; but under such restrictions as may be necessary to prevent their taking, drying, or curing fish therewith.

"It is further well understood, that the liberty of taking, drying, and curing fish, granted in the preceding part of this Article, shall not be construed to extend to any privilege of carrying on trade with any of His Britannic Majesty's Subjects, residing within the limits hereinbefore assigned for the use of the Fishermen of the United States, for any of the purposes aforesaid.

"And, in order the more effectually to guard against smuggling, it shall not be lawful for the Vessels of the United States engaged in the said Fishery, to have on board any goods, wares, or merchandise, whatever, except such as may be necessary for the prosecution of the Fishery, or the support of the Fishermen whilst engaged therin, or in the prosecution of their voyages to and from the said fishing grounds. And any vessel of the United States, which shall contravene this regulation may be seized, condemned, and confiscated, together with her cargo."

To which the United States Plenipotentiaries replied:—

Fisheries.—The American Plenipotentiaries are not authorized by *ib. p. 129.* their Instructions to assent to any Article on that subject, which shall not secure to the inhabitants of the United States the liberty of taking fish of every kind on the southern Coast of Newfoundland, from Cape Ray to the Ramea Islands and on the Coasts, Bays, Harbours,

* It will be observed that the permission to obtain bait in British harbours was inserted by the United States Plenipotentiaries in their proposal. The British Plenipotentiaries struck out the word 'bait,' inserted the word 'purchasing' before the word 'wood' and the word 'obtaining' before the word 'water,' and made the prohibition as to all other purposes more explicit and emphatic than it was in the American article.

This proviso as it was proposed by our negotiators contained the words 'and bait' after the word 'water.' These words were stricken out with the consent of our Commissioners. The right to obtain bait was thus finally disposed of as a treaty right.

Views of the minority of the Committee of the U. S. Senate on Foreign Relations upon the treaty signed on the 15th February, 1838. Vide 'U. S. Documents relating to the Fisheries Controversy, 1838.' App. p. 42.

and Creeks, from Mount Joly, on the southern coast of Labrador to and through the Straits of Belle Isle; and thence northwardly, indefinitely, along the Coast; and also, the liberty of drying and curing Fish in any of the unsettled Bays, Harbours, and Creeks of Labrador, and of the southern Coast of Newfoundland, as above described; with the proviso respecting such of the said Bays, Harbours, and Creeks, as may be settled.

"The liberty of taking fish within Rivers is not asked. A positive clause to except them is unnecessary, unless it be intended to comprehend, under that name, waters which might otherwise be considered as Bays or Creeks. Whatever extent of fishing ground may be secured to American fishermen, the American Plenipotentiaries are not prepared to accept it on a tenure, or on conditions different from those on which the whole has heretofore been held. Their Instructions did not anticipate that any new terms or restrictions would be annexed, as none were suggested in the proposals made by Mr. Bagot to the American Government. The clauses forbidding the spreading of nets, and making Vessels liable to confiscation, in case of any articles not wanted for carrying on the fishery should be found on board, are of that description, and would expose the Fishermen to endless vexations."

On the 13th October, the British Plenipotentiaries brought forward a second *counter project*:

ib. pp. 206-207.

"Art. A.—*Fisherries.*—Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish, on certain Coasts, Bays, Harbours, and Creeks, of His Britannic Majesty's Dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have, for ever, in common with the Subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern Coast of Newfoundland, which extends from Cape Ray to the Rammen Islands, on the western and northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the Shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours, and Creeks, from Mount Joly, on the southern Coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely, along the Coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American Fishermen shall also have liberty, for ever, to dry and cure Fish in any of the unsettled Bays, Harbours, and Creeks, of the southern part of the Coast of Newfoundland, hereinabove described, and of the Coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce, for ever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure Fish on, or within three marine miles of, any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America, not included within the above-mentioned limits; provided, however, that the American Fishermen shall be admitted to enter such Bays or Harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing Fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

This was agreed to and forms Article I. of the Convention, signed in London on the 20th October, 1818.*

This Convention left the "right" of Americans precisely as it had existed under the Treaty of 1783, to take fish at all places "in the sea" common to both nations. But while curtailing the "liberty" formerly allowed in respect of taking fish inshore, it enhanced facilities for curing. Under the former compact they could fish in the

* For the text of this Convention see Appendix to this memorandum.

II

chief places about Newfoundland, but could not use the shores; they might catch and cure fish generally on the coasts, bays, and creeks of the mainland and Magdalen Islands, provided that where settled the consent of the residents should be obtained for landing and curing. Under the latter agreement they could both take and cure fish on certain parts of Newfoundland and a limited extent of Labrador, subject only to permission for drying conveniences from the settlers where the coasts should be inhabited; but the liberty of fishing and curing on the coasts, bays and creeks of Nova Scotia, and that part of Labrador south-west of Mount Joli, was altogether withheld.

The permanent character of this Article was given to it at the instance of the United States. "We inserted the words *for ever*, wrote Mr. Rush, 'and drew up a paper to be of record in the negotiation, ^{at the Court of London,} purporting that if the convention should from any cause be vacated, ^{Rush, p. 334.} all anterior rights were to revive.' The insertion of any words of perpetuity, was strenuously resisted by the British plenipotentiaries. They said that in case of war, the only effect of their omission would be, the necessity of providing in the treaty of peace for the renewal of the right. We replied, that we could agree to no article on the subject, unless the words 'for ever' were retained; or if any counter record was made on the protocol impairing its effect."

So also was the renunciation of the liberty to take, dry and cure fish within the territorial jurisdiction of Great Britain inserted by the American plenipotentiaries. On this point Mr. Rush says:—

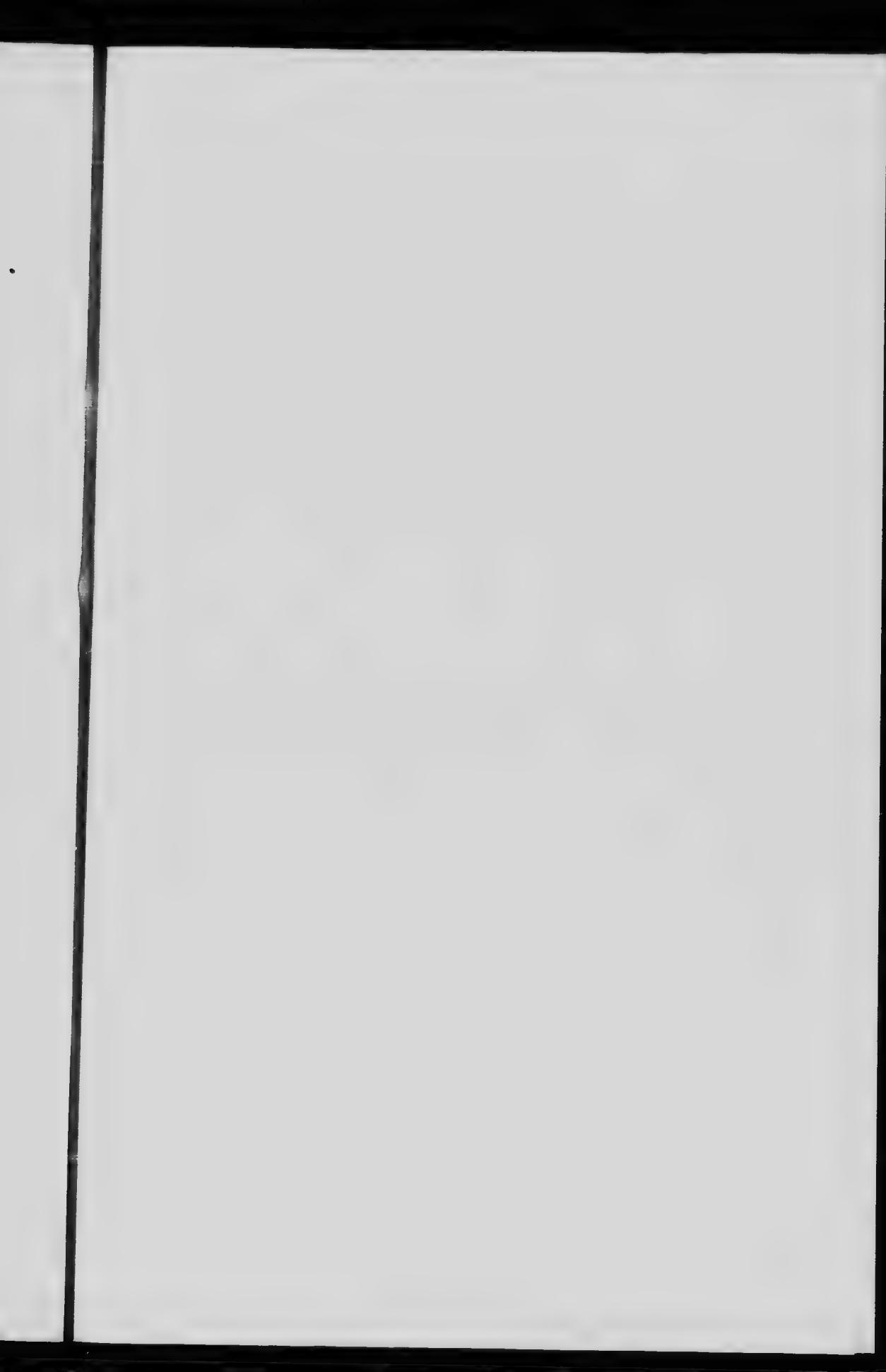
"It was by *our* act that the United States *renounced* the right ^{to the fisheries not guaranteed to them by the Convention. That 18, pp. 334-335.} clause did not find a place in the British counter-proj. We deemed it proper under a three-fold view: 1, to exclude the implication of the fisheries secured to us being a new grant; 2, to place the rights secured and renounced, on the same footing of permanence; 3, that it might expressly appear, that our renunciation was limited to three miles from the coasts. The last point we deemed of the more consequence from our fishermen having assured us, that the whole fishing ground on the coast of Nova Scotia extended to a greater distance than three miles from land; whereas along the coast of Labrador it was almost universally close in with the shore."

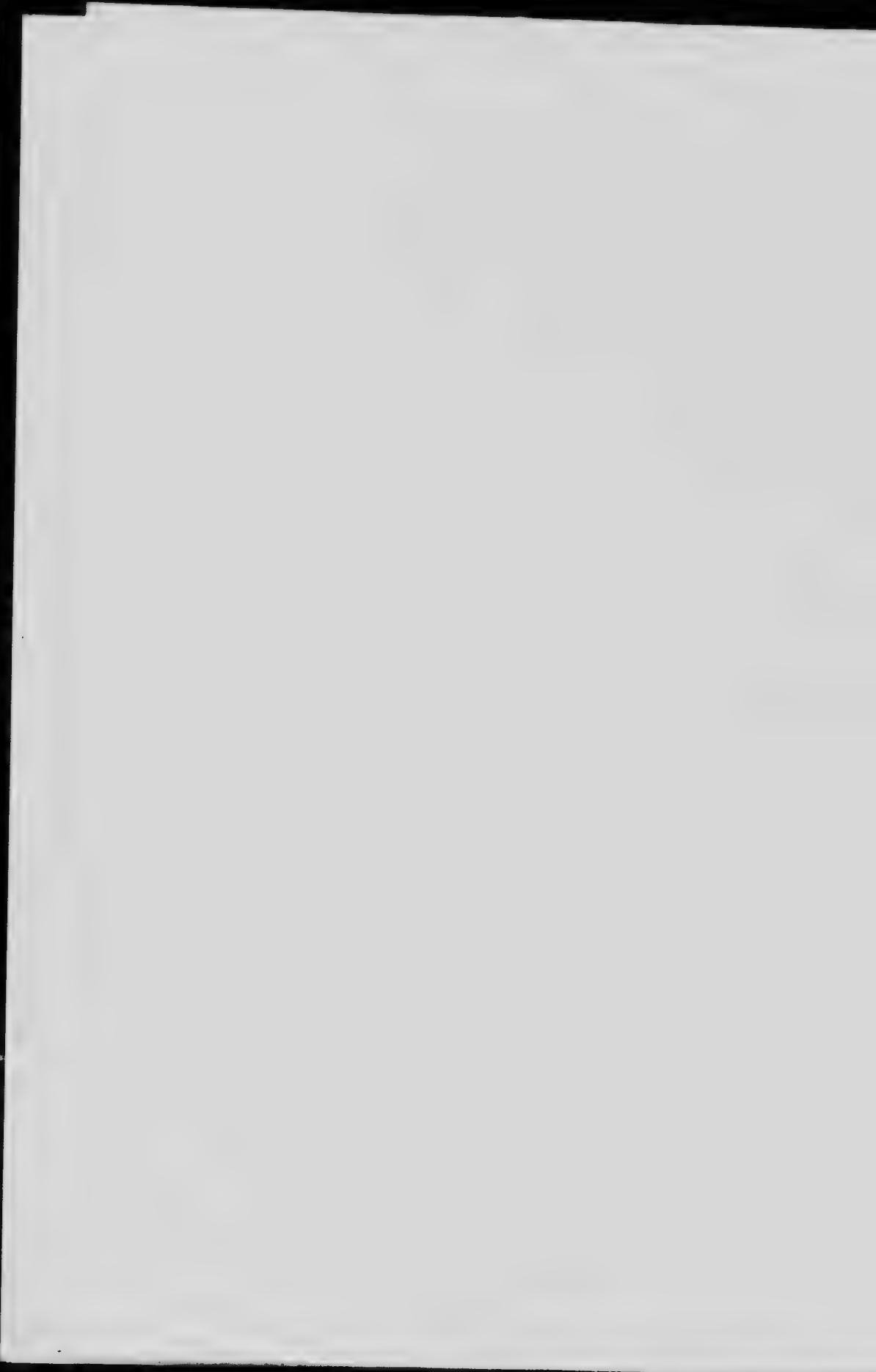
For thirty-six years this convention remained continuously in force. From 1854 to 1866 its effect was suspended by the Reciprocity Treaty of the first mentioned year, and again from 1873 to 1885, by the Treaty of Washington. Upon the termination of the Fishery Articles of that Treaty, the provisions of the Convention of 1818 revived, and continue to this day the standard by which the fishing rights of the two peoples are to be regulated.

J. POPE.

OTTAWA, 14th January, 1907.







CONVENTION RESPECTING FISHERIES, BOUNDARY,
AND RESTORATION OF SLAVES.

Concluded October 30, 1818; Ratifications exchanged at Washington
January 30, 1819; Proclaimed January 30, 1819.

His Majesty the King of the United Kingdom of Great Britain and Ireland, and the United States of America, desirous to cement the good understanding which happily subsists between them, have, for that purpose, named their respective Plenipotentiaries, that is to say:—

His Majesty on His part has appointed the Right Honourable Frederick John Robinson, Treasurer of His Majesty's Navy, and President of the Committee of Privy Council for Trade and Plantations, and Henry Goulburn, Esq., one of His Majesty's Under Secretaries of State:—And the President of the United States has appointed Albert Gallatin, their Envoy Extraordinary and Minister Plenipotentiary to the Court of France; and Richard Rush, their Envoy Extraordinary and Minister Plenipotentiary to the Court of His Britannic Majesty; Who, after having exchanged their respective full powers, found to be in due and proper form, have agreed to and concluded the following Articles:—

ARTICLE I.

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbours and creeks of His Britannic Majesty's dominions in America it is agreed between the high contracting parties, that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly on the southern coast of Labrador, to and through the Straights of Belleisle and thence northwardly, indefinitely, along the coast, without prejudice however, to any of the exclusive rights of the Hudson's Bay Company; And that the American fishermen shall also have liberty for ever, to dry and cure fish in any of the unsettled bays, harbours and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on, or within three marine miles of any of the coasts, bays, creeks or harbours of His Britannic Majesty's dominions in America not included within the above mentioned limits; Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

ARTICLE II.

It is agreed that a line drawn from the most north-western point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or, if the said point shall not be in the forty-ninth parallel of north latitude, then that a line drawn from the said point due north or south as the case may be, until the said line shall intersect the said parallel of north latitude and from the point of such intersection due west along with the said parallel shall be the line of demarcation between the territories of His Britannic Majesty and those of the United States, and that the said lines shall form the southern boundary of the said territories of His Britannic Majesty; and the northern boundary of the territories of the United States, from the Lake of the Woods to the Stony Mountains.

ARTICLE III.

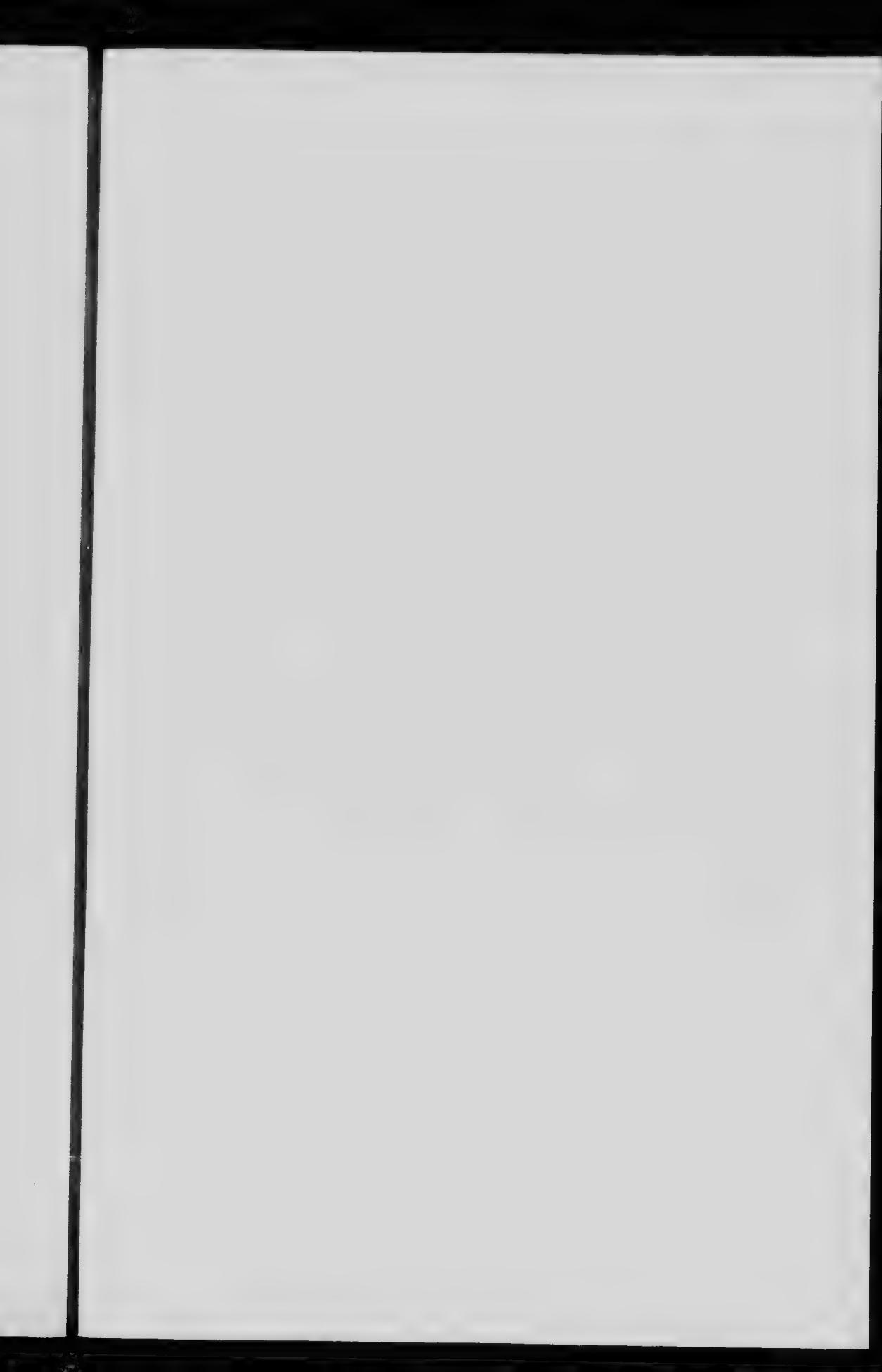
It is agreed, that any country that may be claimed by either party on the north-west coast of America, westward of the Stony Mountains, shall, together with its harbours, bays and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from the date of the signature of the present convention to the vessels, citizens, and subjects of the two powers; it being well understood, that this agreement is not to be construed to the prejudice of any claim, which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country; the only object of the High Contracting Parties, in that respect, being to prevent disputes and differences amongst themselves.

ARTICLE IV.

All the provisions of the convention "to regulate the commerce between the territories of His Britannic Majesty and of the United States" concluded at London on the third day of July, in the year of our Lord one thousand eight hundred and fifteen, with the exception of the clause which limited its duration to four years, and excepting also so far as the same was affected by the declaration of His Majesty respecting the island of St. Helena, are hereby extended and continued in force for the term of ten years from the date of the signature of the present convention, in the same manner, as if all the provisions of the said convention were herein specifically recited.

ARTICLE V.

Whereas it was agreed by the first article of the Treaty of Ghent, that "all territory, places, and possessions whatsoever taken by either party from the other during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the artillery or other public property originally captured in the said forts or places which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves or other private property"; and whereas under the aforesaid article the United States claim for their citizens, and as their private property, the restitution of, or full compensation for all slaves who at the date of the exchange of the ratifications of the said treaty, were in any territory, places, or possessions whatsoever directed by the said treaty to be restored to the United States, but then still occupied by the British forces, whether such slaves were, at the date aforesaid, on shore, or on board any British vessel lying in waters within the territory or jurisdiction of the United States; and whereas differences have arisen whether by the true intent and meaning of the aforesaid article of the Treaty of Ghent, the United States are entitled to the restitution of, or full compensation for all or any slaves as above described, the high contracting parties hereby agree to refer the said differences to some friendly Sovereign or State to



be named for that purpose; and the high contracting parties further engage to consider the decision of such friendly Sovereign or State, to be final and conclusive on all the matters referred.

ARTICLE VI.

This convention, when the same shall have been duly ratified by His Britannic Majesty and the President of the United States, by and with the advice and consent of their Senate, and the respective ratifications mutually exchanged, shall be binding and obligatory on His Majesty and on the said United States; and the ratifications shall be exchanged in six months from this date, or sooner, if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have thereunto affixed the seal of their arms.

Done at London this twentieth day of October, in the year of our Lord one thousand eight hundred and eighteen.

(L.S.) FRED. JOHN ROBINSON. (L.S.) ALBERT GALLATIN
(L.S.) HENRY GOULBURN. (L.S.) RICHARD RUSH.



